



# Liability Issues in New York State: Progress and Roadblocks

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PROGRESS



## Public Officers Law § 17

- ◆ Provides defense and indemnification for “employees” of the state
- ◆ “Employees” defined as those individuals “authorized to act pursuant to a state-sponsored volunteer program”
- ◆ NYS DOH volunteer database qualifies as a “state-sponsored volunteer program”



## Public Officers Law § 17


- ◆ NYS DOH must collect information and maintain the database
- ◆ Volunteers must be activated and deployed by NYS DOH for protection to apply
- ◆ Volunteers may be “handed over” and controlled on site by the local requesting agency
- ◆ Applies to all professional volunteers (not just MDs & RNs) but **not** to non-professional volunteers

# Defense Emergency Act

## NYS Unconsolidated Laws Ch. 131

- ◆ “Volunteer agencies.” Agencies sponsored or authorized by the commission or local offices of civil defense....§ 3(25)





# Defense Emergency Act

## NYS Unconsolidated Laws Ch. 131

- ◆ The state, any political subdivision, municipal or volunteer agency in good faith carrying out, complying with or attempting to comply with any law, any rule, regulation or order . . . relating to civil defense, including but not limited to activities pursuant thereto, in preparation for anticipated attack, during attack, or following attack or false warning thereof, or in connection with an authorized drill or test, shall not be liable for any injury or death to persons or damage to property as a result thereof. § 113(1) (emphasis added)




# Executive Law Article 2-B

## Disaster Preparedness

- ◆ “Emergency services organization” means a public or private agency, organization or group organized and functioning for the purpose of providing . . . medical, ambulance, rescue . . . or other services directed toward relieving human suffering, injury or loss of life or damage to property as a result of an emergency, including non-profit and governmentally-supported organizations, but excluding governmental agencies. § 20(e) (emphasis added)





# Executive Law Article 2-B

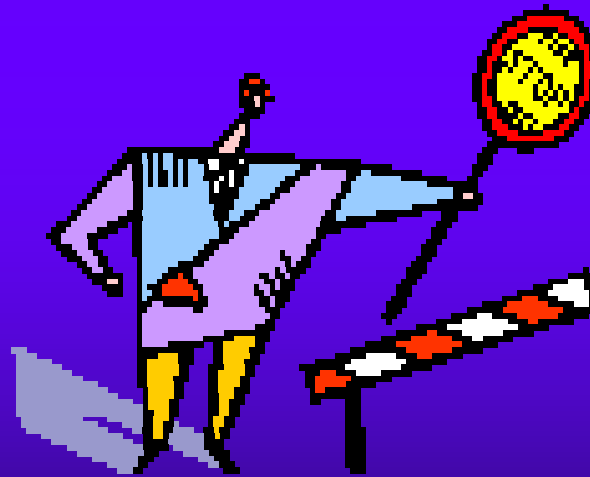
## Disaster Preparedness

- ◆ A chief executive or any elected or appointed county, city, town or village official shall not be held responsible for acts or omissions or municipal employees, disaster preparedness forces or civil defense forces when performing disaster assistance pursuant to a declared disaster emergency or when exercising disaster preparedness plans. § 26(3)





# ROADBLOCKS





# Licensure issues

- ◆ NYS Education Law § 6527(4) provides that the licensure requirements for MDs will not prevent the provision of medical services in an emergency.
  - NYS Education Department (SED) will not offer an official opinion regarding their definition of an “emergency”
- ◆ NYS Education Law § 6908(1)(a)(iv) provides that the licensure requirements for nurses shall not be construed to prohibit the “furnishing of nursing assistance in case of an emergency.”
  - What is “nursing assistance?” Practice of nursing is not defined in statute.



# Licensure Issues

- ◆ No analogous suspension provision for pharmacists, veterinarians or other licensed professionals.
  - SED will not provide an official opinion on the use of retired but no longer licensed individuals during an emergency or during drills and/or trainings.



# Good Samaritan Laws

- ◆ Public Health Law § 3000-a provides that any person\* who:
  1. Renders first aid or emergency treatment;
  2. Voluntarily or without expectation of monetary compensation;
  3. At the scene of an accident or other emergency outside a hospital, doctor's office or any other place having proper & necessary medical equipment;



# Good Samaritan Laws

4. To a person who is unconscious, ill or injured;
- ◆ Shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of such emergency treatment,
  - ◆ Unless the injuries were or death was caused by gross negligence.



# Good Samaritan Laws

\* NYS also has profession specific Good Samaritan laws:

1. Education Law § 6527(2) - Physicians
2. Education Law § 6547 – Physician Assistants
3. Education Law § 6611(6) - Dentists
4. Education Law § 6737 – Physical Therapists
5. Education Law § 6909(1) - Nurses





# Light at the End of the Tunnel?



- ◆ Volunteer Protection Act of 1997 (42 USC § 14503)
  - “[N]o volunteer of a nonprofit organization or governmental entity shall be liable for harm caused by an act or omission of the volunteer on behalf of the organization or entity if –



1. the volunteer was acting within the scope of the volunteer's responsibilities in the organization or entity;
2. the volunteer was properly licensed, certified, or authorized by the appropriate authorities in the state where the activities took place;
3. the harm was not caused by willful or criminal misconduct, gross negligence, reckless misconduct, or a conscious, flagrant indifference to the rights or safety of the individual harmed; and
4. the harm was not caused during the operation of a motor vehicle, vessel, aircraft or other vehicle for which a the state requires an operator's license or insurance.



# VPA Not a Perfect Solution

- ◆ Does not define “governmental entity.”
- ◆ Where do MRC’s fit in if not incorporated as not-for-profit or part of a government agency?
- ◆ Licensure requirement leaves retired professionals uncovered.



# Issues Still Unresolved

- ◆ Workers' Compensation:
  - Will volunteers be eligible?
  - Who pays if volunteer is a member of a non-affiliated MRC? (Any state or local responsibility?)
- ◆ Disability coverage:
  - What's available?
  - Are volunteers eligible?
  - Who foots the bill?

